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PATENT

Docket No.: 02307K-186431US

Client Ref. No.: UCLA Case No.: 1999-543-

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TOWNSEND and TOWNSEND and CREW LLP

By: \_\_\_\_\_

  
Jessie M. Kelly

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Randal Eckert et al.

Application No.: 10/706,391

Filed: November 12, 2003

For: ANTI-MICROBIAL TARGETING  
CHIMERIC PHARMACEUTICAL

Customer No.: 20350

Confirmation No.: 5819

Examiner: Robert A. Zeman

Art Unit: 1645

**REQUEST FOR  
RECONSIDERATION OF PATENT  
TERM ADJUSTMENT  
DETERMINATION  
UNDER 37 C.F.R. § 1.705(d)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.705(d), Applicants respectfully request reconsideration of the patent term adjustment determination. This request is accompanied by the fee set forth in §1.18(e), and a statement of facts as required under 37 C.F.R. § 1.705(b)(2).

In view of the following it is respectfully requested that Applicants be granted a minimum patent term adjustment of **482 days**.

**STATEMENT OF FACTS**

**Correct Patent Term Adjustment and the Bases Under 37 C.F.R. § 1.702 for the Adjustment**

The correct patent term adjustment is 482 days, not 131 days as listed on the front page of U.S. Patent 7,569,542 B2.

The period of adjustment under § 1.702(a) is 432 days (“A delay”).

The period of adjustment under § 1.702(b) is 467 days (“B delay”).

The period adjustment under § 1.704(a) is 417 days (“applicant delay”).

The period of adjustment under § 1.703(f) is 482 days.

**The Relevant Dates as Specified in 37 C.F.R. §§ 1.703(a)-(e), §§ 1.704 and the Adjustment Specified in 37 C.F.R. § 1.703(f)**

**1. § 1.703(a)**

Applicants submit that the Office did correctly calculate the term adjustments to include the term adjustments that Applicants are entitled to 432 days under 37 CFR § 1.703(a). (See **Exhibit A**, attached hereto).

The relevant dates are shown in the tables below.

Filing Date	14-month Date	Date of 1 <sup>st</sup> Restriction Requirement	Days over 14 months (§ 1.703(a)(1))
November 12, 2003	January 12, 2005	December 29, 2005	351

Date of Applicant Reply	4-month Date	Date Response (Notice of Allowance) mailed	Days over 14 months (§ 1.703(a)(2))
June 16, 2008	October 16, 2008	October 27, 2008	11

Date of Issue Fee Payment	4-month Date	Date the Letters Patent Issued	Days over 4 months (§ 1.703 (a)(2))
January 26, 2009	May 29, 2009	August 4, 2009	70

**2. § 1.703(b)**

The Office failed to issue a patent within three years of the actual filing date of the above-referenced application. The period of adjustment under 37 C.F.R. § 1.702(b) begins on the day after the date that is three years from the filing date of the instant application, November 12, 2006, and ends on February 22, 2008, the date a Request for Continued Examination (RCE) in the above-identified U.S. Patent was filed with the U.S. Patent Office.

Thus, the effective period of adjustment under 37 C.F.R. § 1.702(b)(1) is **467 days** as shown in the table below.

Filing Date	3-year Date	Date RCE filed	Days over 3 years through Issuance (§ 1.703(b)(1))
November 12, 2003	November 12, 2006	February 22, 2008	467 days

**3. § 1.703(c)-(e)**

There are no relevant dates as specified under §§ 1.703(c)-(e)

**4. Overlapping periods under § 1.703(a)-(e)**

Applicants have calculated overlapping periods in accordance with *Wyeth v. Dudas* (88 U.S.P.Q.2d 1538, D.D.C. 2008). Periods of delay under 35 U.S.C. §154(b)(1)(A) and 35 U.S.C. §1.54(b)(1)(B) overlap only if they occur on the same calendar day or days (*see Wyeth*).

There are no overlapping periods under § 1.703(a)-(e).

**5. Applicant delay under 37 C.F.R. §1.704**

The Office did correctly calculate the period of adjustment under § 1.704(a)-(e) as **417days** as indicated by the Patent Term Adjustment History (*see Exhibit A*). The 417days is the sum of four periods of delay under 37 C.F.R. § 1.704. The specific delay types are defined below:

Reduction under § 1.704(b)	182 days
Reduction under § 1.704(c)(7)	219 days
Reduction under § 1.704(c)(8)	16 days

Total reduction under § 1.704 417 days

**6. Total Patent Term Adjustment under § 1.703(f)**

The period of adjustment under 37 C.F.R. § 1.703(f) is as follows:

Sum of delay under § 1.703(a)-(e):

Type "A" delay: 432 days

Type "B" delay: 467 days

"A" and "B" overlap: 0 days

Adjusted Patent Office Delay + 899 days

The above adjusted Patent Office delay (§ 1.703(a)-(e)) is subtracted by the reduction to the patent term due to Applicant delay (§ 1.704) to determine total Patent Term Adjustment under 37 C.F.R. § 1.703(f):

Patent Office Delay + 899 days

Applicant Delay - 417 days

Total Patent Term Adjustment + 482 days

**Terminal disclaimer**

The instant application is not subject to a terminal disclaimer.

**PATENT TERM ADJUSTMENT DETERMINATION**

Pursuant to *Wyeth*, Applicants are entitled to **482 days** of patent term adjustment, *i.e.*, [899 days (Adjusted "A" delay + "B" delay)] minus [417 days (applicant delay)].

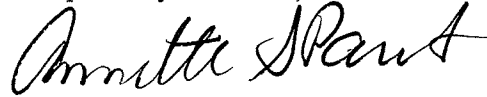
Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

Randal Eckert et al.  
Application No.: 10/706,391  
Page 5

PATENT

Please charge the fee set forth in 37 C.F.R. §1.18(e) (\$200.00) to Deposit Order Account No. 20-1430. Please charge any necessary additional fees or credit any overpayments to our Deposit Order Account No. 20-1430.

Respectfully submitted,

A handwritten signature in cursive script, reading "Annette S. Parent".

Annette S. Parent.  
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